

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ALLEN WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

August 13, 2013

No. 308866

Wayne Circuit Court

LC No. 11-007548-FC

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during a felony (felony firearm), MCL 750.227b. He was sentenced to concurrent prison terms of eight to 24 years for the assault conviction and one to 24 years each for the CCW and felon in possession convictions. In addition, defendant was sentenced to a consecutive five-year term for his second felony firearm conviction. We affirm.

**I. BASIC FACTS AND PROCEDURE**

The charges arose out of an incident in which Martell Harper was shot in the leg. Harper was with Derrick Murray at the time of the incident, and both testified at trial. Harper knew both defendant and Murray and arranged for them to meet to discuss a drug deal involving Oxycontin, a prescription medication. According to Harper, Murray was considering buying the pills from defendant. Harper testified that defendant called him the day before the shooting to discuss the time and place where they would meet. The next day, he and Murray arrived at the specified location, which Harper believed to be where defendant lived. When they arrived, defendant was standing in front of the apartment building and led them to a basement laundry room. Harper testified that defendant and another man then pointed guns at him and Murray and demanded money. Defendant pulled a baby's mattress over Harper and shot him through the mattress. Harper identified defendant as his shooter but did not know the other gunman.

Murray testified that he did not know what either of the gunmen looked like and could not identify defendant. Murray was asked how he got to court that morning, and he stated that officers came to get him but he came voluntarily. The prosecutor started to ask Murray about his recollection of proceedings at district court, and defense counsel objected on relevancy grounds.

The trial court overruled the objection stating, “It could go to the reason why he testifies in the way that it does.” The prosecutor asked Murray whether he remembered telling the prosecutor at the district court proceeding that he did not wish to testify against defendant and that, if he took the stand, he would not say anything. Murray replied affirmatively and stated that in fact he did not testify at defendant’s preliminary examination. The prosecutor then asked Murray if he remembered the purpose for him being in district court that day, and Murray responded, “You said come on the case and something happened.” Asked whether he wanted to be in court to testify at defendant’s trial, Murray answered, “No, sir.”

Defendant’s sole contention on appeal is that this questioning of Murray was legally irrelevant and unfairly prejudicial. With regard to Murray’s statement at the district court that “something happened,” defendant argues that it was left to the jury to speculate on the “something” that had happened. Defendant also argues that the damage was compounded when Murray was asked about his desire not to testify. There was no further explanation other than that the witness did not want to testify. Defendant argues that this evidence allowed the jury to conclude that the reason Murray did not want to testify had something to do with defendant, such as threats made by defendant or threats made on defendant’s behalf. Defendant maintains that a cautionary instruction may have been sufficient to protect defendant, but no cautionary instruction was requested or given.

## II. STANDARD OF REVIEW

“A trial court’s discretionary decisions concerning whether to admit or exclude evidence will not be disturbed absent an abuse of that discretion.” *People v Mardlin*, 487 Mich 609, 614; 790 NW2d 607 (2010). “When the decision involves a preliminary question of law[,] however, such as whether a rule of evidence precludes admission, we review the question de novo.” *Id.* Generally, all relevant evidence is admissible and irrelevant evidence is not. MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998). The credibility of witnesses is always a material issue, and evidence that shows bias or prejudice of a witness is always relevant. *People v McGhee*, 268 Mich App 600, 637; 709 NW2d 595 (2005). Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403; *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995).

## III. DISCUSSION

The trial court did not abuse its discretion in allowing the challenged testimony on the ground that it was relevant. It was the jury’s duty as a fact-finder to assess the credibility of the testimony of a witness. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Testimony regarding a witness’s lack of enthusiasm to testify is relevant to that assessment.

There is no question that the evidence was relevant to the credibility of Murray’s testimony. Contrary to defendant’s argument on appeal, the evidence was never presented as an argument that defendant had somehow threatened the witness. The prosecutor pointed out that Murray indicated he was not a drug dealer, when the evidence may have supported another conclusion. There is nothing in the record to support an inference that Murray was threatened by defendant. In light of the overwhelming facts of this case and the importance of witness credibility, the probative value of the evidence was not substantially outweighed by the potential

for prejudice to defendant, and the admission of the evidence was not an abuse of the trial court's discretion. MRE 403.

Affirmed.

/s/ Mark T. Boonstra

/s/ David H. Sawyer

/s/ Christopher M. Murray